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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/051,401	01/18/2002	Robert Wayne Glenn JR.	8401	9592

27752 7590 10/14/2003

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CINCINNATI, OH 45224

EXAMINER

BENNETT, RACHEL M

ART UNIT	PAPER NUMBER
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1615

DATE MAILED: 10/14/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/051,401

Applicant(s)

GLENN ET AL.

Examiner

Rachel M. Bennett

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 25 June 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) 12-30 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Election/Restrictions*

1. Applicant's election with traverse of Group I, claims 1-11 in Paper No. 7 is acknowledged. The traversal is on the ground(s) that there is no serious burden placed on the examiner to consider all the claims. This is not found persuasive because the different groups are independent and distinct, which are not connected in operation or design.

The requirement is still deemed proper and is therefore made FINAL.

### *Specification*

### *Double Patenting*

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 1-11 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-18 of U.S. Patent No. 6,544,499. Although the conflicting claims are not identical, they are not patentably distinct from each other because both disclose a composition comprising a protected thiol compound having the formula R-(S-Pr)<sub>m</sub>, wherein R is a mono or multivalent cosmetically active functional group, S is sulfur, Pr is an protecting group and m is an integer between 1 and 100 and a topically acceptable vehicle.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1, 9-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Guskey (US 5965113).

Applicants claim an anhydrous treatment composition comprising a reactive agent and a solvent in which the reactive agent is soluble and which is water miscible.

Guskey discloses an anhydrous antiperspirant gel-solid stick which comprises from about .05% to about 60% by weight of antiperspirant active; from about 1 to about 15% of a gellant; from about 1% to about 50% by weight of a nonpolar volatile hydrocarbon solvent, and from about 1% to 10% of water miscible, polar solvent, wherein the water miscible polar solvent may be propylene glycol. See claims 1-11. Therefore, these claims are anticipated.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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7. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. Claims 1-2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Guskey (US 5965113).

Applicants claim an anhydrous treatment composition comprising a reactive agent and a solvent in which the reactive agent is soluble and which is water miscible.

Guskey discloses an anhydrous antiperspirant gel-solid stick which comprises from about .05% to about 60% by weight of antiperspirant active; from about 1 to about 15% of a gellant; from about 1% to about 50% by weight of a nonpolar volatile hydrocarbon solvent, and from about 1% to 10% of water miscible, polar solvent, wherein the water miscible polar solvent may be propylene glycol. Guskey discloses the concentration of the water-miscible polar solvent will vary with the specific combination of water-miscible polar solvent, gellant, volatile nonpolar hydrocarbon solvent and optional other solvents or gellants in the composition. Furthermore, the preferred concentration of the combination of solvents and optional liquid carrier in the gel-solid stick composition range from about 10% to about 80%. See col. 15. Guskey does not disclose the % weight of the water-miscible solvent to be from about 25% to about 95%.

Absent unexpected results, it is the position of the examiner it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the %

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weight of the water-miscible solvent because Guskey teaches the concentration of the water-miscible polar solvent will vary with the specific combination of water-miscible polar solvent, gellant, volatile nonpolar hydrocarbon solvent and optional other solvents or gellants in the composition. Furthermore, the preferred concentration of the combination of solvents and optional liquid carrier in the gel-solid stick composition range from about 10% to about 80%. Therefore, one of ordinary skill in the art would determine a suitable range of water-miscible solvent through routine experimentation based on the specific combination of other solvents as taught by Guskey.

*Correspondence*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rachel M. Bennett whose telephone number is (703) 308-8779. The examiner can normally be reached on Monday through Friday, 8:00 A.M. to 4:30 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K. Page can be reached on (703) 308-2927. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1234.

rmb

THURMAN K. PAGE  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1600